FILE COPY.

No. 131.

In the Supreme Court

of the United States.

OFFICE OF THE CLERK
RECEIVED
MAY 2 1906
SUPREME COURT U.S.

SAN ANTONIO TRACTION COMPANY,
Plaintiff in Error,

vs.

GEORGE A. ALTGELT, suing herein by his next friend, GEORGE C. ALTGELT, *Defendant in Error.*

Writ of Error from the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas.

MOTION FOR RE-HEARING BY PLAINTIFF IN ERROR.

CHARLES W. OGDEN,
Attorney for Plaintiff in Error.

J. R. Wood Ptg. Co 208 N. Presa Street, San Antonio, Texas.

No. 131.

In the Supreme Court

of the United States.

SAN ANTONIO TRACTION COMPANY,
Plaintiff in Error,

vs.

GEORGE A. ALTGELT, suing herein by his next friend, GEORGE C. ALTGELT, *Defendant in Error.*

Writ of Error from the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas.

MOTION FOR RE-HEARING BY PLAINTIFF IN ERROR.

May it please the Court:

It is restpectfully suggested that after a careful examination of the opinion of this Honorable Court, it is thought that, with propriety, plaintiff in error may ask the Court to consider whether this case be not one in which it would be proper to grant a re-hearing, on the following grounds, to-wit:

FIRST.

The Constitution of the State of Texas, adopted in 1875, like similar constitutional provisions adopted by many States of the Union about the same time, withdrew, in express terms, from the Legislature the theretofore existing power to pass special acts granting to corporations the charter right to construct and operate street railways upon the streets of any of the cities within the State.

AUTHORITIES.

Section 7, Art. 10, of the Constitution of the State of Texas, adopted in 1876, reads as follows:

> "No law shall be passed by the Legislature granting the right to construct and operate a street railway within any city, town, or village, or upon any public highway without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by said railway."

Sections 1 and 2 of Article 12 of the Constitution of Texas, adopted in 1875 provides:

> "Section 1. No private corporation shall be created except by general laws."
>
> "Section 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public, and the individual stockholders."

The general corporation laws of the State of Texas, as they existed in 1900, when the Plaintiff in Error was incorporated and acquired the property rights of the pre-existing Companies, provided as follows:

> "Art. 641. Private corporations may be created by the voluntary association of three or more persons for the purposes and in the manner hereinafter mentioned."

Article 642 of the Revised Statutes of Texas specifies fifty-four distinct purposes for which corporations can be formed, among which are the following:

> "For the constructing, acquiring, maintaining, and operating street railways, and suburban or belt lines of railway within and near cities and towns, which may also construct, own, and operate union depots."

Article 643 provides as follows:

"A charter must be prepared, setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place or places where its business is to be transacted.
4. The term for which it is to exist.
5. The number of directors or trustees and the names of those who are the appointees for the first year.
6. The amount of the capital stock, if any, and the number of shares into which it is divided."

Article 644 provides that the Charter must be subscribed and acknowledged by three or more persons, two of whom must be citizens of the State.

Article 645 provides that "Such charter shall thereupon be filed in the office of the Secretary of the State, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or the record thereof certified under the great seal of the state, shall be evidence of the creation of the corporation."

Article 646 prevides that "The existance of the corporation shall date from the filing of the charter in the office of the secretary of the State, and the certificate of the secretary of State shall be evidence of such filing."

Fort Worth Ry. vs. Rosedall Ry., 68 Tex., 177.
Mayor vs. Houston St. Ry. Co., 83 Tex., 548.
Dunn vs. Taylor, 80 Tex., 659.
People vs. O'Brien, 111 N. Y., 1.
Pacific Ry. Co. vs. Leavenworth, 1 Dillon Circuit Court Reports, 303.
2 Dillon on Municipal Corporations (4th Edition), Section 701 and note.

It is most earnestly, but with the utmost respect submitted that this Honorable Court has, doubtless through the imperfections in the presentation of the case on behalf of the plaintiff in error on the original hearing, fallen into a grave and serious error as to the plain, settled and accepted purpose, meaning and effect of the provisions of the Constitution of the State of Texas of 1875, bearing upon the questions involved in this case.

The contention on behalf of the plaintiff in error on the original hearing was, as is stated by the Court in its opinion that the power "to grant to street railways the property right and franchise to construct and operate a street railway within a city is withdrawn from the Legislature, and conferred, if not by expressed terms, then by necessary implication, upon the municipal authorities."

In denying the soundness of this contention the opinion uses language which indicates that counsel was unable to convince the Court that no remnant of the former power of the legislature to grant to street railway company, franchises to construct and operate street railways in cities was left unrevoked by the Constitution of 1875. In reviewing this question it is important that the Court should recall to its memory the history of constitutional provisions, such as those contained in the Constitution of Texas of 1875, and similar ones

which were incorporated about the same time in the organic laws of many of the States.

In Sec. 701 a, of the 4th Edition of his work on Municipal Corporations, Judge Dillon, after referring to the amendment of the Constitution of the State of New York, adopted Jan. 1st, 1875, which contains substantially the same provisions as applicable to this question, as are found in the Constitution of Texas, adopted in the same year, says:

> "Several other States have ordained constitutional provisions of the same general character, although some of them do not so distinctly protect the abutting owners. These salutary organic provisions, whose necessity originated in constantly growing private and public injuries and injustice arising from the free exercise of unrestrained legislative power, are founded upon a true conception of the nature of streets in cities so far as concerns the rights of the public therein * * *."

This distinguished writer and jurist says in the same section:

> "These constitutional changes mark a distinct stage in the progressive developement of our jurisprudence which we may well pausefully stop to consider."

In the celebrated case of People vs. O'Brien, above cited. the Court of Civil Appeals of New York, had before it the determination of the question of the effect of the amendment to the Constitution of that State of 1875, providing among other things:

> "The legislature shall not pass a private or local bill for any of the following cases; * * * granting to any corporation, association or individual the right to lay down tracks; granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever. The Legislature shall pass

> general laws providing for the cases enumerated in this Section. * * * But no law shall authorize the construction or operation of a street railway company, except upon condition that * * * the *consent also of the local authorities* having control of that portion of a street or highway upon which it is proposed to construct or operate such railroad, being first obtained."

The Broadway Surface Ry. Co. was incorporated under the general incorporation laws of the State of New York, and acquired its franchise to construct and operate its road over streets of the City from the municipal authorities. The Court in an opinion concurred in by all of the Judges held that:

> "By such incorporation the company became an artificial being, endowed with capacity to acquire and hold such rights and property both real and personal, as were necessary to enable it to transact the business for which it was created, and allowed to mortgage its franchise as security for loans made to it, but having no present authority to construct or operate a railroad upon the streets of any municipality. This right, under the constitution, could only be acquired from the city authorities, and they could grant or refuse it at their pleasure, The constitution not only made the consent of the municipal authorities indispensable to the creation of such a right, but, by implication, conferred authority upon them to grant the consent, upon such terms and conditions as they chose to impose, and upon the corporation the right to acquire it by purchase. The framers of the constitution, evidently treating the privilege as a valuable one, which should be disposed of for the benefit of the municipality, to those who should pay the highest price for it, gave the municipal authorities the exclusive right to grant the privilege, which had theretofore been exercised by the legislature alone, and authorized its acquisition by contract from such municipality."

In the case of Fort Worth Ry. Co. vs. Rosedale Ry. Co., above cited, the Supreme Court of the State of Texas, had

before it for determination the question as to the effect of the provisions contained in the Constitution of Texas of 1875, bearing upon this subject, to which reference is above made, and in an unanimous opinion laid down the same doctrine as did the Court of Appeals of New York in the O'Brien case. Chief Justice Stayton, writing the opinion for the Supreme Court, says:

> "Through its act of incorporation, the appellant acquired simply a corporate existence, through which it might conduct the business specified in its articles of incorporation, this being such as the general law, under which incorporation was effected, contemplates. This is the extent of the right and power acquired by the appellant through its articles of incorporation, which are not before us.
>
> The statute specifies the purpose for which, under it, corporations may be created by the voluntary act of the incorporators, and it declares the general powers which such corporations may exercise. One of these purposes is "the construction and maintenance of a street railway" but a compliance with the statute gives no right other than a corporate existence, and no power other than such as the law itself declares the corporation when created, may exercise, or such as may be fairly implied from the powers expressly conferred or the nature of the business to be carried on by the corporation. The appellant had the power to construct and maintain a street railway, and we may infer that it was incorporated for the purpose of constructing and maintaining such a road in the city of Fort Worth, for the statute requires the articles of incorporation to state certain facts. First: The name of the corporation. Second: The purposes for which it is formed. Third: The place or places where its business is to be transacted. Fourth: The term for which it is to exist. Fifth: The number of its directors or trustees, and the names and residences of those who are appointed for

> the first year. Sixth: The amount of its capital stock, if any, and the number of shares into which it is divided. (Revised Statutes, Arts. 566-567.)
>
> The articles of incorporation could not give any right to use a street, and it is a matter of no importance, in this respect, what recitals, other than those required by law, the articles of incorporation filed in the office of the Secretary of State may have contained. To acquire the right to use any of the streets in the city of Fort Worth for the construction and maintenance of its railway, the consent of the city had to be obtained. The Legislature, at the time the appellant was incorporated, through a special charter might have given it the right without the consent of the city to use any of its streets, but this was not done. The Legislature now has no such power. (Constitution, Art. 1, Sec. 7.)

It is respectfully suggested that if the court will again read the cases of Mayor vs. Houston Street Railway Co., 93 Texas, 545-555, and Dunn vs. Taylor, 80 Texas, 659, it will find that they, together with the Ft. Worth case from which the above quotation is taken, show, with absolute conclusiveness that the settled and accepted construction placed upon the provision of the Constitution of 1875 is that it takes away from the Legislature every vestige of its former power to exercise any control whatever over the subject of the construction and operation of street railways on and over the streets of any city. It will, it is confidently believed, be perfectly apparent to the court that, when viewed in the light of the well known history of this character of constitutional legislation, the construction which the Supreme Court of Texas has placed upon the constitution of this State is in perfect accord with the case of People vs. O'Brien, and many other cases which might be cited, in which similar provisions in the constitutions of other States have been construed, and given the

effect intended by the framers thereof.

Under that which, it is believed, has been shown to be the universally accepted construction of constitutional pravisions such as those contained in the Texas Constitution of 1875, the authority of the Legislature over street railway corporations is limited to the power to provide by *general laws* for their incorporation, whereby they become artificial beings, but which have no authority, by reason of their incorporation, to construct, own, or operate street railways in any municipality. The Legislature, by its general laws, can, and does, grant to such corporations the right to exist, transact business, and acquire and hold property, as artificial beings. It is freely admitted that all and everything that the Legislature grants is by Section 17, Article 1, of the Bill of Rights, subject to its control. The Legislature, however, does not, and cannot grant to such corporations property rights of any character. The Legislature of Texas has not, since the adoption of the present constitution, nor can it, pass any law which invades so much as a hair's breadth the absolute and exclusive power which the constitution confers upon municipal bodies to give or sell the property rights and franchises of constructing and operating street railways on the streets of the cities of this State.

SECOND.

In the absence of an unequivocal declaration to the contrary it must be held that the framers of the constitution intended that the power to enter into an inviolable contract, granting franchises to construct and operate street railways in cities, should be vested somewhere, otherwise there would be no possibility of inducing the investment of capital in public utilities of this character.

While it is thoroughly understood that the courts do not,

and should not, be deterred from placing upon any character of legislation its true and intended construction, however, disastrous might be the consequences to any public or private interest; it is, at the same time, respectfully submitted that it is proper, and, sometimes, necessary, to look to this phase of the matter for the purpose of determining what construction the legislators intended should be placed upon their enactments.

In the State of Texas there are a vast number of growing towns and cities, which, as yet, have no street railway systems, but to which, in time, public utility plants of character will become absolute necessities.

It is perfectly clear that under the constitution the legislature could not induce or authorize the investment of a dollar of private or corporate capital in such enterprises; and unless resort is had to the dangerous experiment of municipal ownership, the municipal authorities must have the power to offer capital a definite franchise, possessing the elements of permanency and security; otherwise the last street railway system in the State of Texas has been constructed.

In the case of People vs. O'Brien, above cited, the Court says:

> "When we consider the generality with which investments have been made in securities based upon corporate franchises throughout the whole country, the numerous laws adopted in the several states providing for their security and enjoyment, and the extent of litigation conducted in the various courts, state and federal, in which they have been upheld and enforced, there is no question but that, in the view of legislatures, courts, and the public at large, certain corporate franchises have been uniformly regarded as indestructible by legislative, authority, and as constituting property in the highest sense of the term."

It must have been known to the framers of the Constitution of the State of Texas that it is only in franchises of this indestructible character that capital would seek investment.

It is most respectfully submitted that the far reaching construction which has, in this case, been placed on the Constitution of Texas, should, in itself, be sufficient to make the court hesitate before reaching the definite and final conclusion, that it is the correct one.

It is earnestly insisted that the decisions of the Supreme Court of the State of Texas, to which reference has been made, should be sufficient to protect the Constitution of this State from a construction from which such disastrous results will flow.

It is also, with the utmost respect, submitted that if there was no decision by the Supreme Court of Texas, bearing upon the subject, it should be presumed and held that when the framers of the Constitution of Texas incorporated within that instrument the provisions in question and couched them in substantially the same language as had been theretofore used in other legislation, both statutory and constitutional, they intended to accomplish precisely the same results as were sought by the other legislative bodies in enacting similar legislation.

To provisions such as those under consideration a settled and accepted construction has been given by the highest courts of the land. The decision of this Court in the case of Detroit vs. Detroit, etc. Ry., that of the Court of Appeals of New York in the case of People vs. O'Brien, and many other cases that might be cited hold that where the power to grant street railway franchises is conferred upon municipal authorities by statutory or constitutional legislation, in the language employed by the Constitution of the

State of Texas, then an ordinance granting such a franchise, which is duly accepted, constitutes a contract which is binding on both parties thereto, and confers upon the grantee a property right in which he can invest his capital, with the positive assurance that it will be protected by the Constitutions of both the State and the Nation. The same construction should, without question, be given to the Constitution of Texas in this case, and thereby save it from having the effect of rendering it impossible, in this State, to obtain a street railway franchise within any City of this State, in which the most venturesome speculator would invest a dollar, and also save it from having the effect of destroying the value to the municipalities of such franchises.

THIRD.

Where the Constitution forbids the construction or operation of street railways upon the streets of any incorporated city "without the consent of the corporate authorities" the latter are not limited to a simple granting or denial of the right of way, but may prescribe conditiions on which they give their consent, and, if these are accepted by the street railway company, they are binding upon the parties.

Authorities.

Dillon on Municipal Corporations, Sec. 706.

Pacific R. R. vs. Leavenworth, 1 Dill., C. C., 393.

People vs. O'Brien, 111 N. Y., p. 1.

City of Cleveland vs. Cleveland Citizens R. R, Co., 194 U. S., 517.

Railroad vs. Railroad, 166, p. 557.

The power given to municipal authorities to grant or withhold their censent to the construction of street railways with-

in the municipalities, would be an valueless one, unless it carried with it the right and power to make a valid and binding sale of the franchise, or, in their discretion, to enter into a contract which would be valid and binding on both parties thereto.

There would be no value whatever, in the commercial world, to a street railway franchise, or to a contract granting one, in which the municipal authorities reserved the right to change, modify, take from, or add to its terms, conditions, and provisions. Likewise would such a franchise be valueless into which the law read the condition that, while binding on the parties thereto, it was, nevertheless, subject to change and modification, and could, at any time, be annulled, in whole or in part, by some third party or power. It must be perfectly apparent that if the Constitution of Texas reserves to the Legislature the power to change and modify a street railway franchise granting by the city authorities under the express power conferred upon them by the Constitution, then the result is precisely the same as though the provision conferring the power upon the municipality had been omitted from the Constitution.

It is a well known canon of construction of all instruments, which has been frequently applied by this court, that each and every part shall, unless the plain and unequivocal language of the instrument is to the contrary, be so construed as to create no conflict or inconsistency between its provisions. This rule is based upon the almost conclusive presumption that in no part of the instrument will its authors deliberately insert a provision which will absolutely destroy another provision which, with equal deliberation, is inserted in another part of the instrument.

Article 1 of the Constitution of the State of Texas, in Sec-

tion 17 of which this Court holds is reserved to the Legislature the power to legislate against the contract between the plaintiff in error and the City of San Antonio, was, by the framers of the Constitution, designated as a "Bill of Rights,"—or the article which deals with the fundamental principles of government.

Article 10, by Section 7 of which is expressly conferred upon the municipal authorities, to the exclusion of the Legislature, the power to grant street railway franchises, deals with the specific subject of "Railroads."

If there is any conflict between the general provision, and that dealing with the specific subject, then, under another well known rule of construction, the former must yield.

It is, with the utmost respect, submitted that to hold that section 17 of the Bill of Rights reserves to the Legislature the power to legislate against any provision in the contract between the plaintiff in error and the City of San Antonio, is to disregard both of the above stated elementary rules of statutory construction.

It would seem that both reason and authority would dictate that the only true rule of decision to apply in this case would be to hold that Section 7, of Article 10, of the Constitution of Texas, confers upon municipal authorities the full and ample power to grant street railway franchises within the cities of this State; and that this power necessarily involves the incidental and indispensable one of entering into a contract that could not be lawfully violated by either of the parties, or by any third party; that section 17 of the Bill of Rights does not, in fact, nor was it intended, to conflict with section 7, of Article 10; and that if, by any construction which can be placed on the Section of the Bill of Rights referred to, a conflict is made to appear, then such a construction must be

ignored as being one which was clearly not intended by the framers of the Constitution; and that, if there is an apparent and irreconciliable conflict between the two Articles, the one dealing with the specific subject under investigation should control.

In this connection it is respectfully suggested that if the Legislative enactment which, in this case, is attacked, is a valid enactment, and, as such, has destroyed that provision in the contract between the plaintiff in error and the City of San Antonio which provides that a fare of 5c shall be charged for each passenger, then the effect is that the entire contract has been destroyed, including those provisions which are beneficial to the City, and under which the plaintiff in error is annually expending large sums of money in the construction and maintainance of the City streets.

The court is most respectfully urged to examine the authorities above cited, and particularly, the case of the People vs. O'Brien, since it is earnestly believed that these decisions are well supported by reason and authority, and are conclusive of the questions involved in this case.

FOURTH.

The franchise granted by the City of San Antonio to the San Antonio Street Railway Co. survived the dissolution of that corporation, and passed, unimpaired, by assignment, to the plaintiff in error together with all the rights therein of the San Antonio Street Railway Co., which were by ordinance of the City of San Antonio, of date August 17, 1900, confirmed to the plaintiff in error, notwithstanding the recitation that the former grantee of the franchise was "now defunct," thus expressly recognizing the continued existence and binding force and effect as between the plaintiff in error and the City of the

contract evidenced by the ordinance of 1899, and the acceptance thereof.

AUTHORITIES.

People vs. O'Brien, 111 N. Y., p. 1.
Detroit vs. Detroit, etc. Ry. Co., 184 U. S., p. 369.
City of Cleveland vs. Cleveland, etc. Ry., 194 U. S., p. 517.

It is so well settled by all of the authorities that the property rights acquired in street railway franchises are not, in the slightest degree, impaired by a termination of the corporate existence of the grantee, that we will not trespass upon the valuable time of this Court by a discussion of this question. It is here referred to for the reason that, from certain expressions contained in the opinion of the Court, it is thought that possibly this Court attached some importance to the circumstance that the San Antonio Street Railway Co., had, as a corporation, passed out of existence.

FIFTH.

Under the Constitution of Texas the municipality of San Antonio, in granting the franchise in question, acted, not as an agency of the State, but as a creation of the State, upon which certain sovereign powers were conferred, to be exercised for the sole use and benefit, and to the best advantage of the municipality, and its people. In the exercise of these sovereign powers, conferred by the Constitution, the City acted independently.

This Court, in its opinion handed down in this case, uses the following language:

> "An important consideration in this connection is that the alleged contract was made twenty-three years after the Constitution of 1876 was adopted declaring that all privileges granted by

> the Legislature shall be subject to its control. Clearly it is not deprived of that control by the fact that the contract was not entered into by the Legislature itself, but by a municipal corporation, since that is but an agency of the State to which is delegated the power to regulate street railway and other municipal franchises."

It is conceded that this would be the true and only rule to apply to the case at bar, if the power to regulate street railway franchises had been conferred upon the municipal authorities by the Legislature itself. In such a case the City would be but an instrumentality, employed by the Legislature for the purpose of granting the franchise, and the City would act as an agency of the Legislature.

To illustrate: The Constitution of Texas withdraws from the Legislature the power to grant street railway franchises within the limits of any incorporated City, but leaves its pre-existing power as to all other character of franchises unimpaired. The cities, therefore, grant electric light, water, and sewerage franchises only under the Legislative authority. It is freely conceded that, as to such franchises, it would make no difference whatever as to whether the grant of the franchise was made by the Legislature or by the cities acting under its authority. In either event the provision of Section 17 of the Bill of Rights would apply, and the power of the Legislature to control the franchises would be unquestioned.

In the case, however, of street railway franchises, the power is conferred upon the municipal authorities, to the exclusion of and not as an agency of the legislature by the Constitution itself, and, to such a case, the rule must be applied which is announced in the case of People vs. O'Brien, above cited, and it must be held that since the franchise was not granted by the Legislature, or under its authority, it has no control over it.

SIXTH.

It it because the contract in question was entered into twenty-three years after the adoption of the Constitution of 1876, and because it was made with the City that it cannot be impaired by the Legislature.

The court in its opinion holds that because the contract in questien was entered into after the adoption of the Constitution the rule laid down in Yazoo and Mississippi Railroad Co. vs. Adams, 180 U. S., p. 41, and other cases cited by the court, should be applied here.

If, as the court holds, the City, in granting this franchise and entering into this contract, acted as an agency of the Legislature, the cases cited would unquestionably be entirely decisive of this case.

If, upon the other hand, as we have endeavored to show, the City acted independently, and not as an agent of the Legislature, then the cases cited have no application.

To illustrate again:—If the City had granted an electric light or water franchise, after the adoption of the Constitution of 1876, it could have done so under the Legislative authority only. The grantee of such a franchise would take it subject to the provisions contained in Section 17 of the Bill of Rights, and, under the rule announced in Yazoo and Mississippi Railroad Co. vs. Adams, and other cases, the franchise would be subject to Legislative control.

In this case, however, the street railway franchise was granted, after the adoption of the Constitution, by the City, acting under its constitutional powers, and from a participation in the exersice of which the Legislature is expressly excluded.

SEVENTH.

The Constitution of the United States protects the plaintiff in error from all legislation impairing the obligation of the contract in question, no matter how insignificant may be the resulting inroad upon its revenues.

It is true, as stated by the court in the concluding paragraph of its opinion, that in this case there is no allegation or proof that the reduction in the price of the school tickets in question would seriously impair the revenues of the plaintiff in error. It is also true that it is customary for street railways to sell tickets to school children at reduced rates. These were the very considerations which prompted the plaintiff in error to pursue, voluntarily, the course with relation to the matter which is testified to by its President, Mr. Reagan Houston,—Trans. p. 21. When this controversy arose, the plaintiff in error was selling school children tickets at a half rate. It was pursuing this course voluntarily, rather than to engage in litigation over a matter in which small values were involved. This litigation arose out of the circumstance that the defendant in error was not accorded as prompt attention by the employes of the plaintiff in error as he demanded when he applied to purchase the tickets. He instituted this proceeding to compel the sale of the tickets, and the plaintiff in error, it is respectully submitted, was justified in defending the suit, not so much for the purpose of protecting its revenues against this comparatively small reduction, but rather to prevent, if possible, the rendition of a judgment, the effect of which would be to destroy the value of the contract in question, both to the City and to the plaintiff in error.

It is most respectfully submitted that if, as contended on behalf of the plaintiff in error, the legislation here involved im-

paired the obligation of a valid and binding contract, it should and will be declared invalid, no matter how great or small may be the amount of plaintiff in error's revenue it attempts to take away.

Wherefore, upon the foregoing grounds, plaintiff in error respectfully prays that this Honorable Court to grant a rehearing of said cause.

CHARLES W. OGDEN,
Attorney for Plaintiff in Error.

I Chas. W. Ogden, Attorney for Plaintiff in Error, do hereby certify that, in my judgment, the foregoing petition for rehearing is well founded, and that same is not interposed for delay.

Charles W. Ogden